

PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE

Minutes of Meeting
November 12, 2008
Olympia, Washington

Members Present: Chair Tom Carr, Ramsey Ramerman, Senator Pam Roach, Representative Lynn Kessler, Senator Adam Kline, Roselyn Marcus, Patience Rogge, Frank Garred, Tim Ford, Ken Bunting and Rowland Thompson.

Members Absent: Representative Jay Rodne and Candy Jackson.

Staff Present: Jean Wilkinson, Counsel; Ruthann Bryant, Staff Support

Opening: Chair Tom Carr called to order the meeting of the Public Records Exemption Accountability Committee at 9:05 a.m. on November 12, 2008, at the John L. O'Brien Building, Hearing Room A., Olympia, WA.

- 1) **Approval of November 12, 2008 agenda.** Chair Carr noted that Representative Rodne requested that the Committee delay a vote on RCW 42.56.290 and attorney-client privileged records until he could be present. He added that the report to the Legislature is due on November 15, 2008. The Committee deferred discussion until Representative Kessler and Senator Roach were present. *Ken Bunting moved to adopt the agenda as presented, seconded by Roselyn Marcus. The motion passed unanimously.*
- 2) **Approval of Final Minutes for October 14, 2008 Sunshine Committee Meeting.** Frank Garred noted that the minutes do not reflect the motion he made regarding the exemption for records relevant to a controversy and attorney-client privileged records. *Ramsey Ramerman moved to adopt as amended, seconded by Tim Ford. The motion passed unanimously.*
- 3) **RCW 42.56.330(3) – Personal information in vanpool, carpool, ride share programs.**

Public Comment:

Doug Klunder, ACLU Privacy Project Director, commented that although he has no objection to Mr. Ramerman's recommendation, he requested that a clause be added prohibiting the use of information gained for any purpose other than for rideshare programs.

Following discussion, the Committee agreed to amend the first provision as follows:

*First, a provision could be added that allows participants, **for the purpose of personal safety**, to identify individuals they do not want their information disclosed to, and the agency administering the program would then not disclose the information to the identified person. To limit liability, another provision should be added to make it clear that the agency is not liable if it erroneously releases the information.*

Patience Rogge moved to adopt the recommendation for RCW 42.56.330(3) as amended, seconded by Senator Kline. The motion passes with a vote of 5-4.

- 4) **RCW 42.56.230(1) – Personal information in files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients. RCW 42.52.250(3) – Public employee/volunteer personal information. RCW 42.56.230(2) – Personal information in files maintained for employees and officials to the extent that disclosure would violate their right to privacy.**

Ramsey Ramerman moved to amend the agenda to move up Item 7, regarding RCW 42.52.250(3), .230(1) and .230(2) since they are all related to disclosure of personal information, seconded by Chair Carr. The motion passed unanimously.

Public Comment:

Doug Klunder, ACLU, noted that the exemptions could be addressed by putting a balance into the statute.

Arthur West, citizen, commented that the proposal to broaden the exemption is not well founded.

Attorney Don Austin, noted that there is a Federal law that trumps the State law and added that the committee should ensure there is not a conflict.

Mr. Ramerman reported that there is a general gap in the law regarding personal information and a broader recommendation is needed.

Mr. Ramerman moved to repeal the recommendation regarding RCW 42.56.230(1) adopted by the committee on July 8, 2008. He requested further information from counsel and suggested a possible working group to gather additional information. Seconded by Mr. Ford. The motion passed unanimously.

5) Exemptions for records relevant to a controversy and attorney-client privileged records.

Chair Carr noted that Representative Rodne requested a delay on the vote regarding this agenda item until he could be present. *Mr. Ramerman moved to remove Item 5 from the agenda, seconded by Senator Roach. The motion failed by a vote of 6-4.*

Public Comment:

Attorney Don Austin expressed his concern with the proposals, noting that some create an uneven playing field and there is no evidence to support eliminating *Hangartner* and/or *Soter*. He urged the committee to leave the exemption as it is.

Jason Mercier, Washington Coalition for Open Government, presented a document describing a survey conducted by the Coalition, and apologized for being unable to answer committee members' questions..

Citizen Arthur West stated the current exemption is too nebulous and expansive to allow for proper public oversight of public counsel.

Following extensive discussion, the Committee concurred that it would move forward with a proposal to the 2009 Legislature. *The motion to adopt the Bunting proposal made at the October 14th meeting by Mr. Garred, seconded by Representative Kessler, remains on the table. The motion passed with a vote of 7-3.*

7) RCW 13.34.100 – Court appointed special advocates – disclosure of records relating to these programs.

Public Comment:

Kelly Stockman Reid, Executive Director, WA State Association of CASA/GAL Programs, commented that the proposal submitted by Senator Roach is outside the scope of the committee. She added that volunteers are subject to a great deal of regulation and this proposal would have a devastating affect on the CASA/GAL program.

King County Superior Court Judge Patricia Clark, discussed the processes in place to screen CASA/GALs and said there are a number of ways to deal with any problems that arise with a particular CASA. She feels the Committee is not the proper jurisdiction for the issue. She added that

a CASA's opinion does not drive a Judge's decision.

Arthur West commented that Senator Roach's issue is not an isolated event and he agrees with further disclosure regarding volunteers who work with our children.

Senator Roach requested that the issue be discussed at a future meeting.

8) Draft Report to Legislature

The Committee reviewed the draft report, including minority reports. Ms. Wilkinson noted that any additional minority reports are due by Friday.

9) Discussion of dates and locations of 2009 meetings during the Legislative session.

Chair Carr proposed not meeting until May since attendance is very low during session. Following discussion, the Committee agreed to meet in February and discuss future meeting dates at that time.

Chair Carr adjourned the meeting at 1:05 p.m.